United Nations E/C.12/KEN/Q/2-5/Add.1

Economic and Social Council

Distr.: General
21 January 2016

Original: English
English, French and Spanish only

Committee on Economic, Social and Cultural Rights
Fifty-seventh session
22 February-4 March 2016
Item 6 (a) of the provisional agenda
Consideration of reports: reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

List of issues in relation to the combined second to fifth periodic reports of Kenya

Addendum

Replies of Kenya to the list of issues*, **

[Date received: 11 January 2016]

I. General information

1. Information on the number of cases, the nature and extent to which the rights contained in the Covenant were directly applied in domestic courts

1. Article 2(6) of the Constitution of Kenya provides for the incorporation of international human rights law in ratified treaties into the Kenyan domestic legal system. The Constitution, to a large extent, mirrors all the economic, social and cultural rights found in the Covenant. The Kenyan Courts apply the provisions of the Covenant and the Constitution when adjudicating on matters concerning economic, social and cultural rights (ESCRs). A list of some of the cases is attached in annexure 1. Following is a synopsis of a few of the cases, to indicate the nature and the extent to which the rights contained in the Covenant were directly applied in domestic courts.

1.1 The right to housing

2. In *William Musembi & 13 Others v. Moi Education Centre Co. Ltd & 3 Others* [2014] eKLR, the court was guided by Article 11 of the ICESCR and found that the respondents had violated the petitioners' right to housing but further noted that

* The present document is being issued without formal editing.
** Annexes may be consulted in the files of the secretariat.

GE.16-00827(E)

Please recycle

encompassed in a person's dwelling is their family life, their ability to take care of their children, their ability to live a secure and dignified life.

1.2 The right to education

3. In *Michael Mutinda Mutemi v. Permanent Secretary Ministry of Education and 2 Others* Nairobi HCCP No. 133 of 2013 the court held that while economic and social rights were justiciable, states are required to apply as much practicability as possible in the realization of these rights and within available resources and allocation thereof.

1.3 Right to health

4. In *Matthew Okwanda v. Ministry of Health and Medical Services & 3 Others* (2013) the court referred to General Comment no. 14 on the Right to health which defines health as a fundamental right indispensable for the exercise of other human rights.

1.4 Right to clean and safe water in adequate quantities

5. In *Okiya Omtatah Okoiti & 3 Others v. Nairobi City County & 5 Others* (2014) eKLR, the Judge quoted Article 11 of the ICESCR and General Comment No. 15 of the CESCR noting that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

2. Measures taken to strengthen free legal aid schemes in Kenya

6. The National Legal Aid and Awareness Programme (NALEAP) was established in 2007 to improve access to justice for all in the country. The National Steering Committee, which provides policy oversight over the Programme, has overseen and managed the provision of free legal aid in six counties in Kenya on a pilot basis. The Committee has developed the National Legal Aid Bill 2015 and the National Policy on Legal Aid to facilitate the rolling out of the scheme countrywide and to strengthen the institutional and legislative framework for the provision of legal services in Kenya especially for the poor and marginalized. The Bill is undergoing a second reading in Parliament.

7. In the financial year, 2014/2015, NALEAP had a budgetary allocation of Kshs. 51 million.

3. Protection of affected communities

8. The Constitution has provided for the sound management of natural resources and the protection of marginalized communities. The Government has taken a number of steps to protect affected communities when entering into contracts with natural resources extraction companies:

9. The following relevant laws have been reviewed in order to align them with the constitution:

(a) The Mining Bill, 2014. The bill amends the Mining Act, Cap 306;

(b) The Energy Bill, 2014;

(c) The Petroleum Exploration and Production Bill, 2015;

(d) Environmental Management and Coordination Act (Amendment Bill), 2014;

(e) Sovereign Wealth Fund Bill (New Legislation).

10. The Natural Minerals and Mining Policy sets out principles which guide the Government in reforming the mining sector, regulation and promotion of mineral investment and thus enhance the contribution of mineral resources to the economy.

11. The Mining Bill, 2014 is currently before Parliament. It amends the Mining Act, Cap 306. The Bill places obligations on the holder of a mining license to undertake training and offer employment to the local communities, It further emphasizes local equity participation and preference to local products. All mining agreements shall be made accessible to the public in accordance with Article 35 of the Constitution which provides for the right to information as a basic human right.

12. In terms of royalties, the Bill proposes that communities who live where miners are operating are entitled to receive 10% of the income, 20% to the County Government, while the National Government will receive 70%. The National Government should split its royalty revenue between an infrastructure development fund and a sovereign wealth fund.

13. The Government has embarked on law reform to ensure that the extractive sector provides an opportunity to significantly contribute to poverty eradication and improve the wellbeing of not only the endowed regions but the country as a whole.

4. Impact of Economic Partnership Agreements (EPA)

14. The East Africa Community/ European Union's Economic Partnership Agreement (EPA) negotiations was concluded and the EPA Text initialized on 14th October 2014 to signify conclusion of negotiations. The internal due processes are ongoing before signing and ratification. All the East African Community Partner states are required to ratify the concluded EPA before October 2016. The EPA once fully ratified will have significant benefits to Kenya as well as other EAC countries:

4.1 Market Access Offered by the EU to EAC

(a) The EU offered the EAC Partner States duty free quota free market access for all products. Further, the EU offered an automatic derogation for 2,000 tons of tuna loins per year to take care of seasons when the raw materials/tuna loins are scarce in the EAC Territorial waters. The aim is to ensure the concerned industries were not closed during low seasons. These intervention ensured employment and income to the workers in those industries and related businesses;

(b) EAC offered the EU less than 100% i.e. the EAC offered to liberalize 82.6% of the EAC market for the EU imports within a period 25 years, with a seven years moratorium, period before liberalization commenced;

(c) EAC excluded from liberalization sensitive products which account for 17.4% of total trade with the EU;

(d) Final products offered for liberalization constitute about 2.6% of the EAC market for the EU imports. The phase down of these products will commence depending on the entry into force of EPA.

4.2 Customs and Trade Facilitation

15. The Parties agreed to reinforce cooperation in the Customs and Trade facilitation area particularly to simplify movement of export products in order to enhance export trade and clearing of raw materials for industries in Kenya/EAC.

4.3 Trade Defence Measures

16. The agreement provides for Trade defence measures, such as Safeguards, Antidumping and Countervailing duties to take care of import surges and subsidised imports. This is an important tool which has resulted into the protection of the domestic industry and agriculture sector, including small scale farmers from for products which are not excluded from liberalisation.

4.4 Fisheries

17. The agreement covers marine and inland fisheries. It provides a framework of cooperation in conservation, management and exploitation of marine fisheries resources. The framework also provides a chance where Kenya can conclude a bilateral fisheries agreement with the EAC on fisheries, as a strategy towards exploitation of the marine fisheries resources. Exploiting the inland and marine resources has enhanced exports of these products hence creating employment including the small scale fish farmers (aquaculture), and food, livelihood and health security.

4.5 Agriculture

18. The Parties agreed on cooperation in the agriculture development and how to deal with subsidised agricultural products destined for the EAC market. The EU committed not to import into the EAC subsidised products on duty free basis.

4.6 Limited market opening for EU products

19. Only 17.2% of EU products are being liberalized over a period of 18 years from the date the agreement enters into force. About 54% of these products are intermediate goods where reduction of tariffs to zero will contribute towards competitiveness and thus stimulate industrial and economic development. This implies minimal revenue loss, which will be mitigated by economic benefits arising from economic growth that will be stimulated by EPAs. Economic growth is expected from sectors such as cotton and textile where the EU market has been opened through relaxation of the rules of origin, and removal of high tariffs and tariff escalation for agro processed products.

20. Under EAC Customs Union process, before EPAs, already 65.4% of EU exports into Kenya and EAC countries were coming in duty free under the EAC Customs Union. This is a demonstration that bulk of EU's exports into Kenya and the EAC region are mainly raw material and capital goods.

4.7 Exclusion of sensitive products accounting for 17.4% of total trade with the EU (25% in terms of the total tariff lines)

21. Excluding products from liberalization under EPAs was aimed at safeguarding agriculture, industry and Kenya's market interest in the region. Therefore, exclusion list is the means by which the Government is addressing the welfare loss and threats posed by EPAs on Agriculture and Industry. The products in the exclusion list include agricultural and industrial products. Largely agricultural products are shielded by excluding them from liberalization. This position was motivated by need to address food security and rural livelihood. Imports of agricultural produce from the EU under EPA will be facing same import duty as imports coming from all other countries.

22. Negotiated asymmetrical and simplified rules of origin which are supportive of agricultural and industrial development, laying emphasis on value addition for agricultural products. The agreed rules would achieve what the Lome and Cotonou Covenants failed to, i.e. promote industrial development in the EAC region.

4.8 Impact of Investment Agreement under Common Market For Eastern and Southern African (COMESA)

23. Heads of State and Government adopted the Common Investment Area (CCIA) in 2007. The aim of the CCIA is to increase of flow of investment particularly industries for manufacturing. This has translated into job creation and welfare of the people. Agro-related Investments have had positive impact on the small scale farmers through not only employment but also creation of markets for their produce. It applies to other workers even

those not in the agriculture sector. Producers in the country benefit from increased market size. Consumers benefit from lower food prices in the markets especially during times of food shortages in the country as food can be able to move from areas of food surplus in the region into the country. Through the common market protocol the country mobilizes food imports from regional countries with surpluses during times of shortage.

5. Statistical data on annual public spending

5.1 Water and sanitation

24. Investments in urban water and sanitation amounted to Kshs. 12 billion in 2013/14 compared to an investment need of around Kshs 75 billion annually (Kshs 33 billion for water and Kshs 42 billion for sanitation).

25. Though investments through Water Service Boards (WSB) and the Water Services Trust Fund (WSTF) increased almost four fold in the period 2007/8 and2013/14, they covered not more than 12% of the needs stated in the "Strategic Investment Plan for the Water and Sanitation Sector in Kenya 2014. (See Annexure2 on Tables 1 and 2).

5.2 Housing

26. See Table 3 on approved budget for housing.

5.3 Health

27. The approved estimates for the Ministry of Health was at Kshs 54 billion in 2014/15. The actual expenditure for the same period was Kshs 37 billion.

5.4 Social Protection

28. The Government set up the Cash Transfer to Orphans and Vulnerable Children (CT-OVC) Programme, the Older Persons Cash Transfer (OPCT) Programme and Persons with Severe Disabilities Cash Transfer (PWSD-CT) programme under the umbrella National Safety Net Programme, which is aimed at consolidating all government cash transfer programmes and hence streamlining their implementation. In the 2013/14 Financial Year, the total expenditure on the above social protection programmes was Kshs 10.5 Billion against the national budget of Kshs 1,641 Billion. (Annual public spending on social protection, since 2013, is illustrated in Table 4).

5.5 Education

29. Annual public spending in education by the Ministry of Education, Science and Technology and the county government since 2013 is captured in Table 5.

5.6 Percentage of women in senior positions

30. The percentage of women in Parliament, County Government, senior executive positions and the judiciary. This information is illustrated in Table 6 in the annexure.

5.7 Unemployment rates

31. Unemployment rates, in the Formal and Informal Economy: Based on the 2013 figures, the unemployment rate for male was 0.282 (or 28.2%), for female was 0.346 (or 34.6%) and for youth was 0.085 (or 8.5%). It should be noted that the absorption rate for the youth is quite high (at 91.5%) and hence the low unemployment rate for this particular group. According to the Economic Survey 2015, the number of persons employed outside small scale agriculture and pastoralists activities rose from 13,517 thousand in 2013 to

14,316.7 thousand, in 2014 representing a 5.9 per cent growth. This means the economy generated 799.7 thousand new jobs in 2014. In total, new jobs created in the modern sector declined from 134.2 thousands in 2013 to 106.3 thousand in 2014. Based on the Economic Survey of 2015, the formal economy created 2,473,200 jobs in 2014 while the informal economy created 11,843,500 jobs during the same period. This data is summarized in tables 7-10 in the annexure.

5.8 Ratios of households

32. Access to improved water resources and sanitation: Water service provision in urban areas is regulated by licensed utilities. For the year 2013/14 there were 91 utilities covering a population of 10.5 million out of a population 20.5 million in their designated area of service served through 1.6 million connections;

5.9 Health indicators: infant and child mortality

33. Health indicators: The level of under-five mortality is 52 deaths per 1,000 births during the five-year period before the survey, implying that at least 1 in every 19 children born in Kenya during this period died before reaching their fifth birthday. The infant mortality rate is 39 deaths per 1,000 live births. (See Table 11);

34. Maternal Health: Maternal mortality rate has not increased. It stood at 488per 100,000 populations in the last financial period. However analysis on maternal mortality rating by KDHS is yet to be released. Free maternity services introduced by the government have helped to reduce the number of unskilled deliveries which in many ways have been the biggest contributor of the maternal deaths;

5.10 Enrolment rates

35. Net enrolment rates in primary schools (including enrolment rates among children with disabilities, children in informal settlements and children in rural areas), transfer rates from primary school to secondary school and the number of children out of school, disaggregated by sex (See Table 12).

II. Issues relating to general provisions of the Covenant (arts. 1-5)

Article 1 (2) – Free disposal of natural wealth and resources

6. Implementation of the decision of the African Commission on the Endorois Community

36. The Government set up the Taskforce on the implementation of the decision of the African Commission on 26th September 2014. This provided an identifiable structure with which the relevant stakeholders would engage. The taskforce is made up of members from relevant Government departments which have a role in the implementation of the decision, the Kenya National Human Rights Commission and the Concerned County Government.

37. Meetings have been held with the some of the Endorois representatives, the relevant county government, the local administration and other experts for a deeper situational analysis and understanding.

7. Information on the case of forced eviction of Maasai from a settlement in Narasha, which was brought before court in July 2013

38. Article 40(3) of the Constitution allows the State to acquire land compulsorily, if the land is required for a public purpose or public interest, on condition that there is fair, just and prompt payment in full of just compensation.

39. Narasha, Olkaria and Kedong are areas within the Rift Valley in Nakuru County Kenya. The areas are well endowed with great geothermal potential. The Government with the finance backing of the World Bank earmarked this region for green energy generation. The energy was to be generated and transmitted by state organs.

40. Upon conducting the feasibility study, the Government started the resettlement of the Maasai Community living around this region. The community living in Narasha was to be resettled at Kedong Ranch in exchange for their land measuring 15,000 acres to pave way for geothermal production. However, the Government faced resistance to this resettlement from two fronts. Firstly, the Narasha community resisted resettlement because they felt they had not been adequately consulted and compensated. They further claimed that developing the geothermal energy on their land, would greatly diminish their grazing fields. Secondly, the Government faced resistance from the Maasai Community living within Kedong Ranch who felt that land where the Narasha evictees were to be settled amounted to encroachment of their ancestral land which process was being undertaken neither without involvement of the Maasai living in Kedong Ranch nor without plans to compensate them.

41. As a result, the two groups instituted two constitutional petitions (ELC No. 21 of 2010 and ELC No. 54 of 2014) at the High Court in Nakuru. In the first petition, the Kedong Group claimed that they owned the suit land I.R. No. 11977 by adverse possession since they had lived on this land since time immemorial. However, this suit was dismissed by the Court and held that the Petitioners had no good claim for adverse possession. Further, the court held that the 1st Respondent (Kedong Ranch Limited) has a good title and that the suit property is neither public nor community land. It is purely private land and that the registered owner needed not consult the Petitioners on how to utilize the land.

42. In the second petition, the Petitioners pleaded that they and the persons they represent, have a personal stake in the suit land, which is said to be their ancestral land, having been in actual occupation of it since birth. They alleged that the Government was in the process of resettling people from Olkaria and Narasha on the suit land, a process which was claimed to violate the rights of the petitioners, and the Maasai community that resides on the suit land. They alleged that the process was being undertaken without involvement of the Maasai community living in Kedong Ranch and there were no plans to compensate them.

43. The Court held that while the Petitioners had the capacity to institute a representative suit, their claim that the suit property is either community land acquired through ancestry or trust land held by Kedong Ranch Limited in trust for Maasai community cannot stand. The Court further stated that since there was no allegation of a sale or lease or other right over the land which the Kedong Ranch Limited had donated, or promised to the petitioners, for which they can hinge any other sort of trust their claim of trust, cannot stand. The petitioners were merely strangers in so far as it concerns the suit property and the respondents do not need to consult them before they can deal with the property or before they can exploit it. The Petition was dismissed.

7.1 Lamu Port Southern Sudan-Ethiopia Transport Corridor (LAPSSET) project

44. Kenya has a comprehensive legal framework for protection of the indigenous communities affected by the project. Art. 40 and 40(3) of the Constitution offer the

requisite protection with regard to the acquisition of land or other property in Kenya. Other Constitutional safeguards are found in Article 56, which deals with protection of minorities and marginalized groups, Article 60(1) (f) which eliminates gender discrimination in law, custom and practices relating to land.

45. Sections 107 to 143 of the Land Act, 2012 contain elaborate provisions on compulsory acquisition of land in Kenya.

46. Kenya has taken steps to ensure that affected indigenous communities are facilitated to give free, prior and informed consent. Impact on the Indigenous Communities

47. Every time there is a large scale development project the Government acquires land for the project through compulsory acquisition. To reduce resistance against implementation of the projects, the Government has adopted a number of measures, which include:

7.2 *Public Participation*

48. The Government ensures that there is active involvement of the public and affected communities on issues of location, funding, compensation of land and property and resettlement of the displaced persons.

7.3 *Compensation*

49. The Government is ensuring that compensation is adequate by conducting a Government Valuation in which the public participates. The list of persons to be compensation is prepared by the people's leadership at the ground and vetted by the County Government concerned. The National Land Commission and the Ministries concerned with the implementation of the relevant project undertake payment of the compensation. Compensation is guided by two core tenets of timeliness and participatory and consultative.

Article 2 (1) – Maximum available resources

8. Information on corruption cases

50. Tables 14-19 show details of quarterly reports forwarded to the DPP.

51. Between 2011 and 2014, the Ethics and Anti-Corruption Commission recovered illegally acquired public assets valued at over Kshs. 2.5 billion, (approximately USD 30 million) and further averted a loss of public assets valued at Kshs. 62 billion (approximately USD 730 million) through disruptive investigations and interventions. The penalties for of corruption related offences include:

- Fines
- Imprisonment
- Freezing of accounts

8.1 *Information on the measures taken to strengthen the mandate of as well as human and financial capacity of the EACC and other related anti-corruption bodies*

52. With regard to this:

- Increase in budgetary allocations to the commission. In 2013 the allocation was 1,812,748,800

- Increase in human resources. Staff at the commission has risen from 236 to 264. The Commission trained staff locally and abroad in investigation, prevention, good governance, financial management and other competencies
- Opening of regional offices
- Creation of an Anti-corruption division in the High Court. This is in addition to the Special Magistrates Courts that have been hearing anticorruption and economic crimes

8.2 Measures taken to provide protection against reprisals for victims of corruption and their lawyers, anti-corruption activists, whistle-blowers and witnesses

53. Kenya has in place the Witness Protection Act No. 16 of 2006. The Act establishes the Witness Protection Agency at Section 3A.

54. Part II of the Act provides for the Witness Protection Programme and in particular mandates the Agency at Section 4(1) to establish and maintain a witness protection programme and to take such action as may be necessary and reasonable to protect the safety and welfare of the protected persons.

55. The measures that may be taken under Section 4(2) of the Act to protect witnesses include:

- Physical and armed protection
- Relocation
- Change of identity
- Any measure necessary to ensure the safety of a protected person

56. Other measures may also be taken in the judicial process to support the programme as protection measures in court proceedings and these include:

- Holding in camera or closed sessions
- The use of pseudonyms
- The reduction of identifying information
- The use of video link
- Employing measures to obscure/ distort the identity of the witness

57. Under section 13 of the Act, the Director of the Agency under Section 4 may apply for documents necessary to:

- Allow a witness to establish a new identity
- Otherwise protect the witness
- To restore a former participants former identity

58. There is the Public Interest Disclosures Bill 2014 that is at an advanced stage of preparation and is aimed at better protection of whistle blowers. The Anti-corruption and Economic Crimes Act, provides for protection of informers at Section 65.

Article 2 (2) – Non-discrimination

9. Information on the measures taken to provide durable solutions for the internally displaced persons (IDPs), recommendations of the TJRC and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012

59. Following the disputed Presidential Elections of December 2007, 245,416 IDPs households (made up of 663,921 individuals) were profiled as IDPs by the deadline of 31st December 2008.

60. Given that IDPs were faced with different situations and needs, various interventions were adopted that included:

- Rudi Nyumbani operation where IDPs were persuaded to voluntarily return to their farms
- Resettlement in Government procured land
- Cash transfers/payments

61. These interventions are at various stages of completion as outlined in Tables 20-20.5.

10. Information on the measures taken or envisaged to ensure physical accessibility for persons with disabilities and the status of the draft National Action Plan on accessibility and the Persons with Disabilities Amendment Bill 2014

10.1 Measures to ensure physical accessibility

62. The Right to Access is a Constitutional and statutory right in Kenya. The realization of this right has been achieved through:

(a) Entrenchment of Access Right as provided for in the Constitution 2010 and the Persons with Disabilities Act No. 14 of 2003;

(b) Developing and implementing the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009;

(c) Ensuring compliance of KS ISO 2154 standards on Accessibility and Usability to Build Environment by stakeholders in the building industry;

(d) Publishing of the Public Notice on Adjustment Order in the Kenya Gazette on the 30th April, 2015. The Notice gave forty five days to owners of public buildings to adjust their buildings in accordance with the provisions of the Persons with Disabilities Act or face closure;

(e) Guidelines being implemented for accessibility which include; ensuring accessibility to the physical environment, transportation, information and communications, and facilities and services that are open to the public;

(f) Constitution of a Consultative Committee to develop Adjustment Orders.

63. Kenya has established and appointed a Technical Working Committee to implement concluding observations and recommendations arising from the Committee of Experts on Disability on Convention on the Rights of Persons with Disabilities (CRPD) on Kenya's Initial Report on the implementation of the Convention.

10.2 Status of the national action plan on accessibility and disability rights in Kenya

National Action Plan on Accessibility

64. The National Action Plan describes the current situation in the awareness rising, mainstreaming, employment, education, health, transport, Information Communication & Technology, Sports, and Access to Justice and data collection fields. The National Action Plan formulates strategic objectives and contains activities, output, indicators, actors with corresponding timelines and responsibilities. The National Action Plan on Disability is intended to represent the guiding principles of Kenya disability mainstreaming on short, medium and long term basis and to cover the objectives and specific measures in the field of disabilities.

65. The benefits of the National Action Plan include: promoting focused commitment to human rights of PWDs objectives; integrate human rights promotion throughout government administration and it involves acceptance that it is appropriate to allocate significant resources to PWDs activities. This National Action Plan is a companion to the Kenya's Blue Print Vision 2030 and supports its implementation. The National Action Plan on accessibility for PWD is implemented by the National and County governments.

Status of the Persons with Disabilities Bill, 2015

66. The bill, which is before Parliament seeks to enhance the equalization of opportunities for Persons with Disabilities by strengthening areas such as employment, family and marriage and legal capacity. The bill is currently before parliament.

11. Please provide information on the measures taken to implement the High Court judgment of July 2013, which upheld the freedom of movement of refugees and asylum-seekers and their economic, social and cultural rights

67. The government opened registration centres countrywide to allow refugees to continue registering.

68. Through Kenya Gazette notice Vol. CXVI No. 39 of 28th March 2014 Kakuma and Dadaab Refugee Camps were officially designated as areas where refugees reside.

69. The government has been conducting relocation of refugees to camps from urban areas together with UNHCR. Refugees with situations that warrant exemption to reside in the two designated camps such as cases of education, medication and resettlement have been allowed to reside in urban areas.

12. Measures taken to raise awareness of, prevent and combat discrimination based on sexual orientation and gender identity and measures contemplated to decriminalize same sex relations between consenting adults

70. The courts have proclaimed themselves in several cases concerning sexual orientation and gender identity. With regard to intersex persons, in Constitutional Petition No. 266 of 2013, the issues raised were whether intersex persons exist in Kenya, whether they belong to the Covenantal male and female genders or they should be categorized as a third gender. The orders given by the courts were that laws should be enacted by Parliament governing the recognition of intersex persons.

71. With regards to transgender rights, the court in *Republic v. Kenya National Examinations Council & Another ex parte Audrey Mbugua Ithibu* (2014) eKLR gave the Kenya National Examinations Council 45 days to comply with an order to change the name on the petitioner's high school exam certificate, without marking her gender.

72. Government policy for now is against the decriminalization of same sex relations between consenting adults.

Article 3 – Equal rights of men and women

13. Information on the measures taken and/or envisaged to enforce the recently adopted laws, including the Marriage Act 2014, the Matrimonial Property Act 2013

73. The Marriage Act 2014, the Matrimonial Property Act 2013 makes significant gains in securing women's access to matrimonial property during and after the marriage.

74. The Matrimonial Property Act protects property acquired during the existence of a marriage from being disposed of by one party without the consent of the other party.

75. Simpler versions of the two marriage acts have been disseminated.

76. The courts on the other hand are also enforcing the provisions of these two acts. For instance in *RPM v. PKM* Divorce Cause No. 154 of 2008, the Petitioner sought dissolution of the marriage and maintenance of the 2 issues and herself. The court acknowledged the Constitutional provisions of the equal rights of men and women and further on the Marriage Act's provisions on maintenance and held that Respondent had to pay maintenance to the Petitioner and further provide the petitioner with a house to ensure the same lifestyle that the petitioner was accustomed to during the marriage is maintained.

III. Issues relating to the specific provisions of the Covenant (arts. 6-15)

Article 6 – The right to work

14. Information on the measures taken and/or envisaged to increase employment opportunities, particularly in the formal economy, for youth, women and persons with disabilities

14.1 National Employment Policy and Strategy of Kenya

77. The National Employment Policy and Strategy of Kenya was approved by Parliament in July, 2015. The aim of the policy is to mainstream employment creation in social and economic activities and promote productive and freely chosen employment as a priority for national development..

14.2 Training of Female Engineering Learners Programme

78. The National Industrial Training Authority sponsors twenty five (25) qualified and needy girls from poor families in Arid and Semi Arid Lands (ASAL) regions in Kenya annually to pursue training in the area of engineering. This is part of affirmative action aimed at improving the training of girls in this area. Seventy five (75) girls are on-going with the programme. Most of the girls who have completed the programme have secured employment in various sectors of the economy. A tracer study established that 80 per cent managed to secure jobs after the training.

14.3 Establishment of the Labour Market Information System (LMIS)

79. A Labour Market Information System (LMIS) for Kenya is being developed to facilitate storage, access, retrieval, and interrogation of data on various facets of the

country's labour market. One of the modules of the LMIS will facilitate interaction between jobseekers and potential employers through a web-based platform. This module is critical in increasing access to labour market information by both job seekers and employers thus increasing chances of employment for the former. The system seeks to address the challenge of unemployment caused by lack of information on where job vacancies exist. It will be critical in addressing the country's perennial challenge of mismatch between the skills required by the labour market and those possessed by graduates from training institutions. An interactive web-based Labour Market Information (LMIS) portal to facilitate interaction between training institutions, job seekers and employers has been developed. There is an operational system to monitor job opportunities in the labour market.

14.4 Placement of Job Seeker in Employment

80. The government provides Public Employment Services to job seekers, employers and members of the public through a network of 30 County Employment Offices. During the 2013/14 to 2014/15 period, the Ministry placed 51,805 job seekers in employment through the Public Employment Services.

14.5 Increasing employment opportunity for Persons With Disabilities

81. The National Council for Persons with Disabilities (NCPWD) has put in place various measures that ensure that Persons with Disabilities access formal employment:

(a) Developing a disability mainstreaming Handbook that provides for guidelines in promoting the employment of Persons with Disabilities (PWDs). This is in an effort towards achieving the constitutional provision of at least 5% reservations of employment opportunities for PWDs;

(b) The inclusion in the 2015/16 Performance Contracts of a target on ensuring that at least 5% of the total the staff establishment within every Government Ministry, Department and Agency (MDA) are Persons With Disabilities (PWDs) . Under this target the MDAs are supposed to:

- Develop and submit disaggregated data on employment of Persons with Disabilities using a format provided by the NCPWD
- Carry out inclusive advertisement for job vacancies
- Provide long listing of the applicants to indicate how they have included Persons With Disabilities
- Provide inclusive short listing and interviews

The MDAs are required to report to the Council every after every quarter of the Financial Year on progress in implementation of this targets.

(c) The Council has established a Mainstreaming Department which sensitizes employers on the constitutional requirement of 5% reservations of employment opportunities for Persons with Disabilities. The Mainstreaming Department has created a data base with curriculum vitae of Persons With Disabilities which has enabled them to link them to prospective employers for employment;

(d) The Council provides education grants to students with disabilities in educational institutions at all levels as a way of facilitating Persons With Disabilities to acquire skills and knowledge necessary for the job market;

(e) The Council provides assistive devices to Persons with Disabilities to enable them have independent lives by enhancing their mobility and functioning within the work environment.

Article 7 – The right to just and favourable conditions of work

15. Information on the level of the current minimum wage

82. The current basic minimum wage is Kshs. 10,954.70 per month. The house allowance is 15% of the basic wage thus bringing the total wages to Kshs. 12,598 per month for those working in Nairobi, Kisumu and Mombasa cities. The basic minimum wage for all other municipalities, including Mavoko, Ruiru and Limuru town Councils as per column three while the basic minimum wages for all other areas is provided under column four of the Schedule of Minimum Wages cited as Regulations of Wages (General) (Amendment) order 2015

83. This wage covers cleaners, sweepers, gardeners, children's ayah, house servant, day watchman, and messenger. This category comprises unskilled and semi-skilled workers who are vulnerable to exploitation. The wage covers the basic needs of a family of three persons including a couple and one child. It is applicable to workers who are not unionisable and are therefore vulnerable. The rest of the workers negotiate individually or enter into Collective Bargaining Agreements (CBA's) through trade unions or one covered by sector specific wages regulation orders. (See Table 22 for the schedule of basic minimum monthly wage.)

16. Information on the implementation of the Occupational Safety and Health Act 2007 and a national policy on occupational safety health, including resource allocation to the inspection mechanisms

84. The Occupational Safety and Health Act, 2007 provides for the inspection of all workplaces including those in the informal sector and Export Processing Zones (EPZs). In the 2011/12 Financial Year, the Ministry carried out 4,316 inspections, 4,541 inspections in 2012/13, 4,194 inspections in 2013/14 and 5,297 inspections in 2014/15. This is illustrated in Table 23. The inspections are aimed at ensuring that the workplaces adhere to the standards in the Act.

85. Some of the major areas of concern identified from these inspections are: unsafe plant, equipment and machinery; unsafe work practices in construction sites; exposure to chemicals in the agricultural sector; and lack of Occupational safety and Health Management systems in the informal sector.

16.1 Resource Allocation To The Inspection Mechanism

86. Human Resources: Inspection of workplaces for compliance with the Occupational Safety and Health Act, 2007 is carried out by Officers from the Directorate of Occupational Safety and Health Services (DOSHS). The Directorate currently has a total of 65 technical staff against a staff complement of 264. In addition, the Directorate is represented in only 29 of the 47 despite the mandate for inspections being a national government function. This is mainly due to inadequate staffing levels.

87. Financial Resources: In the 2013/14 Financial Year, the expenditure on Occupational Safety and Health inspections was Kshs. 84,045,046. This increased marginally to Kshs. 84,956,553 in the next Financial Year and further to Kshs. 99,683,365 in the current Financial Year (2015/16). This expenditure trend is illustrated in Table 23.

16.2 Implementation of The National Policy On Occupational Safety And Health

88. The National Policy on Occupational Safety and Health was approved by the Cabinet in the 2011/12 Financial Year. The Policy provides a framework for the integration of occupational safety and health issues within management systems in both private and public sectors of the country. Several milestones have been realized since the commencement of implementation of the Policy:

(a) Establishment of an Occupational Safety and Health institute to be completed in the 2015/2016 financial year;

(b) Establishment of the Occupational Safety and Health Fund;

(c) Establishment of an Authority to oversee compensation and rehabilitation for Occupational Diseases and Accidents. This is proposed in the Occupational Safety and Health Bill, 2015. The bill has been submitted to the Commission for Implementation of the Constitution (CIC) for review;

(d) Establishment of an Occupational Disease and Injury Compensation Fund as provided for in the Work Injury Compensation Bill, 2015;

(e) Development of an Occupational Safety and Health (OSH) data management system;

(f) Formation of a professional body for Occupational Safety and Health (OSH) practitioners. An Occupational Safety and Health Practitioners Bill, 2015 has been drafted;

(g) Establishment of Occupational Safety and Health (OSH) award and sanction system launched from 2014;

(h) Mainstreaming Occupational Safety and Health (OSH) into the education system and employee in-service training. A proposal on mainstreaming Occupational Safety and Health (OSH) into the education system and employee in-service training was prepared and submitted to the Kenya Institute of Curriculum Development (KICD);

(i) Awareness creation and capacity building on Occupational Safety and Health (OSH). Special awareness creation programmes have been implemented in the informal sector to address the occupational safety and health deficits identified in the sector. Capacity building of workplace Safety and Health Committees charged with managing safety and health systems at the workplace.

Article 9 – The right to social security

17. Budget allocation to the implementation of the Kenya Social Protection Policy (2011) and measures to secure funding for social protection programmes under the Policy

The National Social Protection Policy's aim is to ensure that all Kenyans live in dignity and exploit their human capabilities for their own social and economic development. Under social assistance, the Ministry was allocated 10.5 Billion shillings in 2013/14 and 15.0 Billion shillings in 2014/15, an increase of 43.16 per cent over the period. In the 2015/16 Financial Year, the Ministry has been allocated 19.0 Billion shillings, an increase of 26.60 per cent over the previous Financial Year.

Measures taken for securing funding for social protection programmes under the Social Protection Policy

89. Under the National Social Protection Policy, the Government support is envisaged to include multi-year budget commitments based on periodic social budgeting and ring-fenced funding to finance cross-sectorial and coordinated programmes. The Government is

required to provide resources from the national budget to support the National Social Protection Policy according to need and based on the affordability of new social protection programmes.

90. The Government has carried out the following in order to secure funding for social protection programmes:

(a) An Expansion Plan of the cash transfer programmes has been developed and provides for the gradual increment of beneficiaries of four cash transfer programmes;

(b) Improvement of the targeting of social protection beneficiaries. This is aimed at ensuring that only the right persons (based on set eligibility criteria) are receiving cash transfers;

(c) Reduction in the administrative costs associated with paying benefits and collecting contributions;

(d) Use of a Single Registry for the four cash transfers to minimize double dipping whereby a beneficiary is able to benefit from more than one cash transfer programme.

18. The National Social Security Fund

91. The National Social Security Fund (NSSF) is established by the NSSF Act No. 45 of 2013 as a defined contributory Scheme. It does not include non-contributory schemes. Under the Act, the Fund covers workers in the formal sector, informal sector and the self-employed. Tier I contributions to the Fund are mandatory for all workers in the formal sector. Employers may contract out their Tier II contributions if these meet the contracting-out requirements as set out by the Act. Contributions from the self-employed are voluntary. The Fund covers three main benefits as provided for by Convention 102 of ILO i.e. old age, invalidity and survivor benefits. The benefits provided for by the Act seek to provide an income replacement of about 42-45 per cent upon retirement at 60 years.

Article 10 – Protection of the family, mothers and children

19. Measures taken to enforce the provisions of the Protection against Domestic Violence Act 2015

92. The following measures have been taken:

(a) Holding monthly National Gender Based Violence (GBV) Working Group Sub Cluster Meetings;

(b) Having an online GBV Forum (http://forum.ngeckenya.org/);

(c) Community sensitization and training of police and chiefs on the implementation of the Act;

(d) Dissemination of a simplified version of the Protection against Domestic Violence Act (PADV) to create awareness;

93. However, the government acknowledges that there is still a lot that needs to be done as the enforcement of this act is still very slow.

20. Concrete measures taken to combat female genital mutilation, polygamy and early marriage

94. The Prohibition of Female Genital Mutilation Act, Cap 62 B, Laws of Kenya has set the anti FGM board that is operational and carrying its mandate in the eradication of FGM.

95. The Act makes it an offence to perform FGM on another and also to train as an FGM practitioner. Persons convicted are liable to prison terms not exceeding three years or a fine or both. Where death results from FGM, the convicted person is liable for life imprisonment. As of August 2015, five cases had been concluded and the perpetrators convicted. 47 cases are ongoing.

96. While the Act provides deterrent sentencing for offenders, the Government also focuses on and emphasizes on the role of education, awareness and behaviour change to bring an end to the practice.

97. FGM is on the decline across the country. The 2014 Kenya Demographic and Health Survey indicated that 21 per cent of women between the age of 15 and 49 had undergone FGM. This is down from the 2009 survey, which indicated an incidence rate of 27 per cent, and the 2003 survey that indicated 32 per cent. This decline indicates improved quality of life and health for girls and women. In addition, because FGM is linked to early marriage, the decline in rates indicates that many more girls are avoiding early marriages and completing their primary and even secondary education. Regional disparities are, however, very wide with areas of North Eastern Kenya indicating prevalence as high as 98 per cent. (See Table 24)

98. Under age marriage remains a challenge arising mainly due to poverty and lack of economic opportunities for girls especially in rural areas, cultural beliefs and practices as well as religious beliefs.

99. The introduction of compulsory free primary education in 2003 is among the factors that have decreased the incidence of early marriages. The Basic Education Act (No. 14 of 2013) promotes the extension of compulsory education to secondary school. As the Act is implemented, the country expects to see a further decline in the number of early marriages. The government also introduced a back to school directive for young girls who become pregnant as a deliberate move to curb early marriages.

100. The government through the National Gender and Equality Commission has been conducting a public inquiry on child pregnancy. This inquiry is expected to contribute towards enhancing protective environment for young girls, through the documentation of drivers of unintended and unwanted child pregnancies; identification of legal and policy implementation gaps as well as identification of mitigating factors to the same.

21. Child labour and sexual exploitation of children

101. The government has made great stride in coming up with measures and programmes to prohibit child labour such as:

(a) The National Policy on Elimination of Child Labour was approved by the Cabinet. The policy has forwarded to Parliament for adoption as Sessional Paper No. 1 of 2015;

(b) The gazettement in 2014 of the list of hazardous work and light work for children as one of the regulations of the employment Act;

(c) Community sensitization through celebration on the World Day against Child Labour, meetings, public barazas, print and electronic media;

(d) The declaration of over 80 beaches as child labour free zones in Usenge and Bondo sub-counties of Siaya County;

(e) The implementation of a programme of skills and livelihood training of adolescent children between the ages of 16- 17 years. A total of 410 were trained and all of them have secured employment. The minimum age of entry into employment under the laws of Kenya is 16 years;

(f) The withdrawal of 1125 children engaged in child labour in Turkana County in 2015. Majority of these children were involved in fishing at Lake Turkana or generally loitering in the streets;

(g) The Employment Act 2007 and Labour Institutions Act 2007 has been reviewed to conform to the Constitution. The reviews are contained under the Employment Act (Amendment) Bill 2014 and Labour Institutions (Amendment) Bill 2014. The amendments contain provisions for establishment of the National Steering Committee and the County Child Labour Committees, functions and membership of the two Institutions;

(h) A total of 2011 labour complaints were reported by children at various County Labour offices;

(i) A total of 262 child labour inspections were carried at the County Labour Offices. As a result of the inspections, a total of 319 children were withdrawn from child labour;

(j) In 2014, The Federation of Kenyan Employers (FKE) is implementing a program on Exploring Corporate Social Responsibility as option for improving schools and retaining children. This has been successfully done in Machakos whereby 150 children have been retained in school through development of school facilities.

102. Children's Officers in the department of Children Services through the Children's Advisory Committees work in partnership with law enforcement agencies to combat trafficking in children and exploitative child labour. The department also focuses on anti-trafficking work in Mombasa where the sex trade and sexual exploitation particularly of girls is high.

103. In regards to the sexual exploitation of children, The National Council for Children's Services developed the National Plan of Action against Sexual exploitation in Kenya 2013-2017. The Plan gives detailed information on awareness creation among others. It also has a matrix on the planned actions.

104. The Council also developed the National Plan of Action for Children in Kenya 2015-2022. It outlines issues of child labour and commercial sex exploitation in terms of prevention. It also focuses on the need to push for implementation of the Sexual Offences Act as part of strengthening the legal and policy framework.

105. Due to the fact that the amendments to the Children Amendment Bill 2014 were too numerous the development of a new statute is underway.

Article 11 – The right to an adequate standard of living

22. The National Poverty Eradication Plan 1999-2015

106. The government came up with a strategy to reduce poverty incidence in rural and urban areas by 50% by the year 2015 and also strengthen the capabilities of the poor to earn income.. The aim of NPEP was to provide a national policy and institutional framework for action against poverty. The Plan has been marginally successful.

23. Recognition of the right to water in the national legislation

107. The Constitution of Kenya recognizes the right to water and sanitation. To ensure that this right is fully implemented the Government has put in place the following frameworks:

(a) The Water Bill 2014 provides for regulation, management of water resources, water and sewerage services to advance the reforms under the current Water Act 2002;

(b) The existence of a National Independent Regulator (Water and Sanitation Regulation Board-WASREB)) to regulate the provision of water and provide consumer protection and interest through provision of good quality, reliable and sustainable services;

(c) National Water Master Plan (2030): The development and launch of the National Master Plan in 2014 to guide the physical and financial planning of the Water and Sanitation Services (WSS) sector in Kenya up to the year 2030;

(d) Service to the underserved/LIA: The Water Services Trust Fund has been established as a poverty fund to assist in the financing of the provision of water and sanitation services to disadvantaged groups/un served areas. Service areas for utilities are being mapped to ensure services are provided efficiently and sustainably including the LIAs. The regulator is developing indicators to track progress in these areas;

(e) Review of Tariffs: Water tariffs for utilities continue to be reviewed to ensure that utilities operate on cost-reflective tariffs. As part of pro-poor initiative, the tariff on water kiosks is now regulated and subsidized (WASREB) is now adjusting the retail price at water kiosks from Kshs 2 to Kshs 1 for a 20 litre container). Increasing block tariffs are also adopted as a water management tool except at the water kiosk. The tariffs approval process comes with conditions for service improvement and expansions;

(f) Enhancement of consumer Engagement: Public participation in service provision is a key consideration in the provision of water and sanitation services. The Water Action Groups mechanism has been scaled up to facilitate public participation in water issues and utilities are required to take full responsibility for convening public engagement forums as per the Consumer Engagement Guideline issued by WASREB;

(g) Development of Investment Planning Guidelines: Prudent spending and a reduction on donor dependence in preference for funding mechanisms like tariff adjustment are central to the realization of targets for water and sanitation under vision 2030. WASREB has developed the Investment Planning Guidelines to guide the deployment of resources by asset developers. This is anticipated to guide the strategic planning of these entities and improve the manner in which the vision of the sector is cascaded from policy to implementation.

24. Measures taken to increase the provision of affordable social housing

108. The National Slum Upgrading and Prevention Policy was developed to provide a framework for the promotion, and protection of the lives and livelihoods of vulnerable people living and working in the slums and informal settlements by strategically integrating them into social, political and economic framework in line with the Constitution of Kenya. The draft policy has been submitted to the Cabinet for approval.

109. The Ministry of Lands, Housing and Urban Development has initiated various programs aimed at increasing the number of affordable housing in Kenya. These include Slum upgrading, creation of an enabling environment for private sector participation in housing delivery process particularly for lower middle and low-income groups, provision of alternative and low cost building technologies and the establishment of the civil servants housing scheme.

110. The Kenya Informal Settlements Improvement Project aims at improving conditions in informal settlements. Activities include enhancing tenure security and improving off-site infrastructure. Its first component focuses on strengthening institutions and program management through capacity building of relevant ministries, and the selected municipalities.

111. The National Housing Policy Sessional Paper 3 of 2004 is aimed at encouraging encourage research and popularize the use of appropriate building materials and

technologies. The Housing policy is currently under review to align it with the Constitution and ensure adherence to Article 40(3) (d).

112. Achievements to date are as follows:

- 822 housing units completed in Kibera Zone A
- 462 Housing units in Mavoko under sustainable Neighborhood Programme (SNP) at 74% completed level
- Implemented Kenya Informal Settlement Improvement projects in 6 counties including which project has so far achieved the following:
    - Civil works are under implementation in 18 settlements in six urban centers e.g. Lang'ata Public housing sites, Market stalls in Manyatta Kisumu, Classrooms at Kakamega Amalemba Slums and development of Housing in Mavoko
    - 31 kilometers of roads and footpaths have been upgraded and another 42 kilometers are nearing completion e.g Access roads at Kibera slums
    - 10 kilometers of drainage systems have been completed
    - 22 high-mast security lights have been installed and are operating
    - Water supply systems are being constructed in three settlements and new or rehabilitated sewerage lines are underway in four settlements
    - 1,226 National Government Housing Units refurbished

113. Challenges remaining include:

- Availability of Finances: e.g Project finances and end –user finances. It is difficult to secure finances/ debts by both developers and end-users
- Delays caused by:
    - Land classification (i.e. converting from agricultural to residential) and approvals
    - Timely disbursals of project finance
    - Infrastructure promised/planned by the government for example, if the government is planning a major road that will pass your property, your project must be viable with or without it.
    - Supply chain/Materials supply shortages
- Volatile economic environment; Rapid inflation has caused large increases in the cost of materials and land
- Materials Bias; Kenyans have been slow to adopt alternative building technologies and have a strong bias towards traditional materials and techniques

25. Evictions

114. The Constitution of Kenya (2010) recognizes the inherent dignity and the right to have that dignity respected and protected. It also makes provision for the right to life and protection of groups and people who are vulnerable such as women, children, the elderly and persons with disabilities.

115. There are proposed amendments to the Land Laws through the Land Laws (Amendment) Bill, 2015 to incorporate elaborate provisions on forced evictions. The Bill has proposed to insert a new provision in the Land Act which provides that unlawful

occupiers of public, Private or community land cannot be evicted there from, except in accordance with the Act. The bill introduces sections 152A to152H, all new provisions on evictions. For instance, in regard to evictions from public land, the National Land Commission must give a three months' notice to all affected persons in writing in the Kenya Gazette.

116. The Government has also established a Land settlement fund which is administered by the National Land Commission under section 135 of the Land Act. The fund shall be applied to the following purposes:

(a) Provision of access to land to squatters, displaced persons, for development projects, for conservation or such other causes that may lead to movement and displacement of persons;

(b) Purchase of private land for settlement programs;

(c) Establishme.at and management of refugee camps;

(d) Provision of shelter and a livelihood to persons in need of settlement programmers.

117. Section 153 of the Land Act sets establishes a Land Compensation Fund. The objects and purpose of the fund is to provide compensation to any person who, as a result of the implementation of the provisions this Act by the National Government, urban area or city or any public, suffers any loss or deprivation of and rights or interests in land or any injurious affection in respect of any ownership of land. This fund shall be administered under the law relating to public finance management.

Article 12 – The right to physical and mental health

26. Increase of maternal mortality rate

118. Maternal mortality rate has not increased- it stood at 488per 100,000 populations in the last financial period. However analysis on maternal mortality rating by KDHS is yet to be released. Free maternity services introduced by the government have helped reduce the number of unskilled deliveries which in many ways have been the biggest contributor of the maternal deaths.

27. Sexual and reproductive health services, particularly for women and girls living in rural areas

119. The National Reproductive Health Policy, 2007 is the main policy framework to enhance the reproductive health status of all Kenyans by increasing equitable access to reproductive health services; improving quality, efficiency and effectiveness of service delivery at all levels; and improving responsiveness to the client needs. The National Reproductive Health Strategy, 2009-2015, was formulated to enable the achievement of the goal and objectives of the National Reproductive Health Policy. The Reproductive Healthcare Bill 2014, which is before Parliament, recognizes reproductive rights, and sets the standards of reproductive health. The Bill provides for the right to make decisions regarding reproduction free from discrimination, coercion and violence.

28. Knowledge of HIV Prevention among Adults and Young People

120. Women and men age 15-19 have lower levels of knowledge of these HIV prevention methods than people age 20 and older. Similarly, knowledge of prevention methods is lower among women and men who have never had sex than among those who are married or living together with a partner, those who are divorced/separated/widowed, or those who

never married but have had sex. Urban residents were more knowledgeable on each of the described methods of HIV prevention than their rural counterparts. As expected, women and men with higher levels of education are more likely than those with lower levels of education to be aware of HIV prevention methods. Similarly, women and men in households in higher wealth quintiles have more knowledge of HIV prevention methods than those in lower quintiles.

121. Surveys have shown that knowledge varies across the counties and between women and men.

122. Women in Garissa, Wajir, and Mandera counties are less knowledgeable of methods of HIV prevention compared with women from other counties. Men's knowledge in Garissa and Mandera is also lower than in other counties. Low levels of knowledge were also found among women and men in Turkana and in Kwale, men in Kilifi, and women in Kitui. It also depicted that knowledge of HIV prevention among young people age 15-24. About one half of young people in Kenya are knowledgeable about methods of HIV prevention; 54 percent among women and 64 percent among men. Knowledge of prevention methods is slightly lower among those who have never had sex than among those who have married or those who never married but have had sex.

123. Like the 2008-09 KDHS, the results indicate that young people (both women and men) residing in urban areas are more knowledgeable than their rural counterparts about HIV prevention. Education and household wealth are strongly related to young people's knowledge. The level of awareness by region generally shows that young women and men in North Eastern region are the least knowledgeable about HIV prevention.

28.1 HIV and AIDS control measures

124. The health sector has continued to undertake interventions aimed at controlling the spread of HIV/AIDS in the country. As a result, considerable achievements have been made within the sector. The proportion of HIV positive pregnant women receiving ARVs to prevent-mother-to child- transmission of HIV have improved from 58.4% (2012/13) through 78.4% (2013/14) to 82.2% (2014/15). These efforts have led in a reduction in HIV infections due to mother-child transmission from 14,168 to 12,941 and finally 11,847 in 2012/13, 2013/14 and 2014/15 respectively (eMTCT Fact Sheet 2015).

125. Under HIV care and treatment, a total of 527,390 (2012/13) through 642,472 (2013/14) to 791,168 (2014/15) were enrolled on life-saving ARV treatment. The NACC in partnership with stakeholders developed the Kenya AIDS Strategic Framework (KASF 2014/15-2018/19) and the County Profile Reports on HIV and AIDS in 2014. Counties are required to contextualize KASF by developing County-specific HIV and AIDS Plans (CASPs). The CASPs will guide counties in implementation and resource mobilization for HIV and AIDS

28.2 Key challenges facing HIV and AIDS control

126. Dependence on donor funding as 75% of the funds spent on HIV and AIDs come from donors.

127. The donors are not scaling up their financial support, due to other competing priorities/needs.

128. The shrinking donor support calls for sustainable and innovative financing of HIV and AIDS from domestic sources. This is further aggravated by rebasing of the economy in September 2014 when Kenya became a Lower Middle Income Country (LMIC) and is therefore expected to contribute more funding to HIV and AIDS.

129. Two to three years down the line, the country may not be able to procure ARVs and related commodities using the pre-negotiated prices of poor countries

Articles 13 and 14 – The right to education

29. Measures taken to increase Public Primary Schools

130. The following measures have been taken:

- Providing funding for infrastructural development through government and CDF
- Fast-track of registration of schools
- Establishment of institutions of Alternative Provision of Basic Education (Non Formal Schools Mobile Schools

131. The following measures have been taken to enhancing the quality of public school education:

- Increasing the capitation for Free Day Secondary School by 30%
- Enhancing in service for teacher especially in science and mathematics
- Provision of grants for laboratory equipment and infrastructure
- Strengthening quality Assurance and Standards by establishing a Council to ensure there is quality education in basic education institutions
- Recruitment of additional teachers and gradual replacement of teachers who leave service

132. Ways in which state parties have regulated and monitored informal private schools:

- The Education Standards and Quality Assurance Council (ESQAC) has been established and is being operationalized
- The mandate of ESQAC includes monitoring the schools for quality assurance through regular school inspections and assessments
- Registration rules for the establishment of APBET institutions have been put in place
- All teachers including those in such schools must be registered

30. Effectiveness of measures taken to bring the large number of children dropping out of school back to school, including girls who have dropped out due to pregnancy

133. Measures taken to ensure that girls who drop out of school go back:

- The Basic Education Act, No. 14 of 2013 directs head teachers to ensure that any girl including boys who drops out of school because of pregnancy is allowed back or re-located to another school
- Re -entry policy is in place to ensure girls who get pregnant or drop because of other reasons re -enter and continue with school
- The No Repetition Policy
- A gender policy in education is also in place to ensure that girls do not drop out of school
- Bursaries are also in place for the needy girls
- A voucher system has also been established to cushion needy families

- Low-cost boarding schools have been established especially in ASAH regions
- Special fund available for girls from North Eastern province who excel in academic and are needy
- Scholarships awarded to girls as a way of encouraging them to continue learning
- School feeding programs are in place especially in areas prone to famine
- Peace Education
- HIV and AIDS policy

Article 15 – Cultural rights

31. Information on the steps taken to protect intellectual property rights arising from traditional knowledge and forms of traditional cultural expression as well as traditional farmers' rights

134. The following initiatives have been taken:

- Construction of 16 community cultural centres
- Annual Cultural Community Festivals in various regions of the country
- Kenya has signed and domesticated several international Covenants relating to conservation and sustainable use of Genetic Resources and has developed regulations to govern Access to Genetic Resources and Benefit Sharing e.g. The Covenant on Biological Diversity (CBD)
- Kenya has developed a National Policy on Traditional Knowledge, Genetic Resources and Cultural Expressions
- The Kenya Copyright Board (KECOBO) has taken the lead in developing a legal and administrative framework for the protection of Traditional Knowledge
- Enactment of the Kenya National Commission for UNESCO Act 2013, to safeguard the intangible cultural heritage and promotion and preservation of the diversities of cultural expression
- Kenya has signed the African Regional Intellectual Property Organization (ARIPO) Protocol on the protection of traditional knowledge and traditional cultural expressions (The Swakopmund Protocol)
- The Seed and Plant Varieties Act is in compliant with International Covenant for the Protection of New Varieties of Plants (UPOV), 1978 and has provisions for protection of farm-saved seeds for propagation by the farmer in the subsequent seasons